IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3816 OF 2006

Smt. Kamalabai Dattatraya Raut ..Petitioner.

Vs.

Mrs. Shubhada Sharadchandra Tilay ..Respondent.

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Mr. V.G. Peshave for the Petitioner.
Mr. V.G. Mujumdar for the Respondent.

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CORAM: DR. D.Y. CHANDRACHUD, J.

19th June, 2006.

P.C. :

1. Rule. By consent of the learned counsel and at their request heard forthwith.

2. The Petitioner has instituted a suit before the Small Causes Court at Pune contending that he was in occupation of three rooms on the second floor of the house property bearing C.T.S. No.440-A at Budhwar Peth, Pune as a tenant. According to the Petitioner the Respondent landlord demolished those premises without taking recourse to law. The work of reconstruction has been nearly completed. The suit seeks a

declaration that the Petitioner is entitled to occupy the premises equal to the tenanted premises in the newly constructed/ developed/ repaired premises at the same site.

3. Paragraph 1 of the complaint contains a description of the tenanted premises. The trial is still to begin. On 13th June, 2005 an application for amendment was moved to include in paragraph 1-A the description of the available premises on the first floor. However, the application for amendment was dismissed by the Learned Trial Judge by the order impugned in these proceedings.

4. All that the Plaintiff seeks by the amendment is to place on record the averment of certain additional premises which are available on the first floor. At this stage whether the Petitioner was entitled to those premises or otherwise, does not fall for determination. The Learned Trial Judge was not justified in coming to the conclusion that the amendment will change the nature of the suit. No prejudice would be caused to the Respondent by allowing the amendment since it would be open to the Respondent to raise all appropriate defences.

5. In the circumstances, the impugned order of the Learned Trial Judge dated 12th July, 2005 is quashed and set aside. The application for amendment of the plaint in R.C. S. No.70 of 2005 is accordingly allowed and the Petitioner is permitted to amend the plaint so as to include paragraph 1-A. This shall however, be without prejudice to the rights and contentions of the parties and it would be open to the Respondent to file an additional written statement. The Petition is allowed accordingly.